

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

BARRY JOE STULL,

Plaintiff,

v.

**LEWIS & CLARK COLLEGE,
NICHOLAS L. DAZER, TIM O'DWYER,
MARK NESBITT, TIM BURGARD, NICK
MOBLEY, and BULLIVANT Houser
BAILEY, PC,**

Defendants.

Case No. 3:12-cv-01556-AC

OPINION AND ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge John V. Acosta issued findings and recommendations in this case on April 29, 2013. Dkt. 34. Judge Acosta recommended that the Court should grant Defendants' Motions to Dismiss (Dkt. 17 & 20) and dismiss this case with prejudice. No party has filed objections.

Under the Federal Magistrates Act ("Act"), the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C.

§ 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

If no party objects, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report[.]"); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review de novo magistrate's findings and recommendations if objection is made, "but not otherwise").

Although review is not required in the absence of objections, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court review the magistrate's findings and recommendations for "clear error on the face of the record."

No party having made objections, this Court follows the recommendation of the Advisory Committee and reviews Judge Acosta's findings and recommendation for clear error on the face of the record. No such error is apparent. Accordingly, the Court **ADOPTS** Judge Acosta's findings and recommendation, Dkt. 34. The Court grants Defendants' Motion to Dismiss for Lack of Jurisdiction, Dkt. 17, and Defendants' Motion to Dismiss for Lack of Jurisdiction and for Failure to State a Claim, Dkt. 20. This case is dismissed with prejudice.

IT IS SO ORDERED.

DATED this 22nd day of May, 2013.

/s/ Michael H. Simon
 Michael H. Simon
 United States District Judge